UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COREY McGREGOR.,	:	
	:	
Petitioner,	:	18 Civ. 2141(PAC)
	:	16 Cr. 590 (PAC)
- against -	:	
	:	**OPINION & ORDER**
UNITED STATES OF AMERICA,	:	
	:	
Respondent.	:	

HONORABLE PAUL A. CROTTY, United States District Judge:

Petitioner Corey McGregor, *pro se*, moves for permission to appeal from the denial of his 28 U.S.C. § 2255 habeas petition *in forma pauperis*. The Court, however, never granted McGregor a certificate of appealability ("COA"), as is required to appeal the denial of a petition under § 2255. *See* 28 U.S.C. § 2253(c)(1) ("Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from . . . the final order in a proceeding under section 2255."). The Court declines to grant a COA now, as it requires "a substantial showing of the denial of a constitutional right." *See id.* § 2253(c)(2). The Court previously denied McGregors's petition because his argument that Hobbs Act Robbery is not a "crime of violence" under 18 U.S.C. § 924(c) is foreclosed by the Second Circuit's decision in *United States v. Hill*, 832 F.3d 135 (2d Cir. 2016), *amended* May 9, 2018. Thus, McGregor cannot make a substantial showing of the denial of a constitutional right.

Moreover, an appeal may not be taken *in forma pauperis* if it is not taken in good faith. 28 U.S.C. § 1915(a)(3). Good faith is demonstrated when a petitioner "seeks appellate review of any issue not frivolous." *Coppedge v. United States*, 369 U.S. 438, 445 (1962). "An appeal is frivolous where it lacks an arguable basis in law or fact." *Tavarez v. Reno*, 54 F.3d 109, 110 (2d Cir. 1995). Given the clarity of the holding in *Hill*, the Court finds that an appeal of this issue

would be frivolous and not taken in good faith. Thus, the Court denies McGregor's motion to proceed *in forma pauperis* on appeal. He may, however, move for such permission and for a COA from the Court of Appeals. *See Coppedge*, 369 U.S. at 445 ("If the District Court finds the application is not in good faith, and therefore denies leave to appeal *in forma pauperis*, the defendant may seek identical relief from the Court of Appeals."); *Lozada v. United States*, 107 F.3d 1011, 1017 (2d Cir. 1997) ("If the district judge denies a COA, a request may then be made to a court of appeals."), *abrogated on other grounds by United States v. Perez*, 129 F.3d 255, 260 (2d Cir. 1997).

Dated: New York, New York
August 7, 2018

SO ORDERED

PAUL A. CROTTY
United States District Judge

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